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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,553	09/19/2000	Michel Gillet	BEIERDORF 65	1497

7590 05/21/2002  
NORRIS MCLAUGLIN & MARCUS  
220 EAST 42ND STREET, 30TH FLOOR  
NEW YORK, NY 10017

EXAMINER

SIMONE, CATHERINE A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

J.D-8

# Office Action Summary

Application No.

09/646,553

Applicant(s)

GILLET ET AL.

Examiner

Catherine Simone

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Group I, claims 1-7, in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. **Claims 1-7** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "has a microscopic effect, a macroscopic embossed effect or both" in **claim 1** is deemed vague and indefinite. Clarification is requested.

The recitation "at least 65% of a thermoplastic elastomer" in **claim 6** is deemed vague and indefinite. Is that 65% by weight? Clarification is requested.

**Claim 4** recites the limitation "the polyolefin". There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. **Claims 1-4** are rejected under 35 U.S.C. 102(a) as being anticipated by Abuto et al. (6,096,668).

Abuto et al. discloses a laminate composed of at least a first layer of an elastic polymer film (Fig. 1, #12) and of a second layer of an elastic textile sheet (Fig. 1, #14), where the finished laminate has a microscopic effect, a macroscopic embossed effect, or both (see col. 10, lines 57-61). Regarding **claim 2**, the weight per unit area of the polymer film is from 15 to 150 g/m<sup>2</sup> (see col. 9, lines 22-24), the weight per unit area of the textile sheet is from 25 to 200 g/m<sup>2</sup> (see col. 9, lines 4-8), or both. Regarding **claim 3**, the polymer film of the first layer has a structure comprising a mixture of LDPE and an LLDPE (see col. 7, lines 50-53), prepared by a metallocene-catalyzed process (see col. 6, line 66). Regarding **claim 4**, the polymer film of the first layer is a copolymer of ethylene (see col. 6, lines 26-35) and an  $\alpha$ -olefin having a carbon number of from C<sub>4</sub> to C<sub>10</sub> (see col. 6, lines 57-59), where the polyolefin has a melt index of from 1 to 20g/(10 min) and a density of from 860 to 900 kg/m<sup>3</sup> (see col. 6, lines 43-49).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 5 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Abuto et al. (6,096,668) in view of Capik et al. (5,354,597).

Abuto et al. discloses a laminate composed of at least a first layer of an elastic polymer film (Fig. 1, #12) and of a second layer of an elastic textile sheet (Fig. 1, #14), where the finished laminate has a microscopic effect, a macroscopic embossed effect, or both (see col. 10, lines 57-61). However, Abuto et al. fails to disclose a tie layer and a self-adhesive coating. Capik et al. teaches it is known in the art to have a tie layer (see col. 6, lines 3-15) and a self-adhesive coating (see col. 13, lines 1-5) for the purpose of producing an elastic laminate.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the polymer film in Abuto et al. with a tie layer and the textile sheet in Abuto et al. with a self-adhesive coating as suggested by Capik et al. in order to form an elastic laminate.

8. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over Abuto et al. (6,096,668).

Abuto et al. discloses the claimed invention except for the specific percentage of a thermoplastic elastomer as set forth in claim 6. However, Abuto et al. teaches percentages of a thermoplastic elastomer (see col. 6, lines 49-52). Thus, one of ordinary skill in the art would have recognized that the percentage of the thermoplastic elastomer would be readily determined through routine experimentation depending on the desired end results.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the specific percentages of the thermoplastic elastomer as shown by Abuto et al., since it has been held that where the general conditions of a

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claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents are cited for further teachings of elastic laminates similar to that instantly disclosed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (703) 605-4297. The examiner can normally be reached on 9:00-5:30.

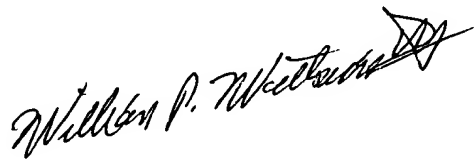
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Catherine Simone  
Examiner  
Art Unit 1772

May 16, 2002



WILLIAM P. WATKINS III  
PRIMARY EXAMINER